

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Yahya Muqit, #318455,)	C/A NO. 2:08-3904-CMC-RSC
)	
Petitioner,)	
)	ORDER
v.)	
)	
Warden, McCormick Correctional)	
Institution,)	
)	
Respondent.)	
_____)	

This matter is before the court on Petitioner's *pro se* application for habeas corpus relief filed in this court pursuant to 28 U.S.C. § 2254.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Robert S. Carr for pre-trial proceedings and a Report and Recommendation. On June 30, 2009, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice as Petitioner has not yet exhausted his state court remedies. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Petitioner sought an extension to file objections to the Report through August 20, 2009, which this court granted. *See* Dkt. # 55 (filed July 27, 2009). However, Petitioner has filed no objections and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which

a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge relating to the fact that Petitioner has not yet exhausted his state court remedies.

This petition is dismissed without prejudice.¹

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
September 21, 2009

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¹There are several pending motions in this matter, including a motion for summary judgment filed by Respondent. *See* Dkt. # 33 (filed Mar. 20, 2009). Respondent’s motion seeks relief under Federal Rule of Civil Procedure 56(b), which normally is a dismissal with prejudice. However, the conclusion of Respondent’s memorandum in support of the motion indicates that he seeks dismissal without prejudice. Therefore, to the extent Respondent’s motion seeks dismissal without prejudice, it is granted. Petitioner’s pending motions (Dkt. Nos. 26, 27, 28, 35, and 44) are **denied**.